

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

APOLLO HEALTHCARE CORP. d/b/a
APOLLO HEALTH AND BEAUTY CARE

Plaintiff,

v.

SOL DE JANEIRO USA INC. and
SOL DE JANEIRO IP, INC.,

Defendants.

Civil Action No.: 1:22-cv-07719-LLS

SOL DE JANEIRO USA INC. and
SOL DE JANEIRO IP, INC.,

Counterclaim-Plaintiffs,

v.

APOLLO HEALTHCARE CORP. d/b/a
APOLLO HEALTH AND BEAUTY CARE
and COSTCO WHOLESALE CORP.,

Counterclaim-Defendants.

DECLARATION OF THOMAS J. GOROWSKY SUMMARIZING

TRIAL TESTIMONY OF THOMAS J. GOROWSKY

I, Thomas J. Gorowsky, hereby declare as follows:

1. The statements made in this declaration are based on my personal knowledge

and are known by me to be true and correct. I am fully competent to provide this declaration, which I offer to summarize my trial testimony.

2. I submit this summary of my professional background and the expected trial testimony I will offer as an expert witness on behalf of Plaintiffs and Counterclaim Defendants Apollo Healthcare Corp. d/b/a Apollo Health and Beauty Care (“Apollo”) and Costco Wholesale Corp. (“Costco”) (Apollo and Costco are collectively referred to as the “Apollo Parties”) in the above-captioned case. A true and correct copy of my rebuttal expert report submitted in this matter on November 15, 2023, is attached hereto as **Exhibit A**.

3. I have developed expertise in economic analysis related to forensic investigations, intellectual property infringement, breach of contract, business valuations, employment disputes and products liability claims. I have more than 15 years of financial, accounting, and expert witness consulting experience.

4. My projects have involved a variety of industries including software design, technology, retail, wholesale, health & fitness clubs, banking, commodity trading, securities, franchise, package distribution, medical device, snow blowers, professional athletics, and aviation.

5. I earned a Bachelor of Business Administration (B.B.A.) degree in finance from the University of Wisconsin-Madison and a Master of Business Administration (MBA) degree from the Carlson School of Management at the University of Minnesota. My full Curriculum Vitae (“CV”) is located at **Exhibit A, Appx. A**.

Gorowsky Rebuttal Report

6. My trial testimony will include my rebuttal opinions in response to the

opinions on damages submitted by Defendant and Counterclaim Plaintiff Sol De Janeiro USA, Inc. and Sol De Janeiro IP, Inc. (“SDJ”) in the Expert Report of John G. Plumpe (“Plumpe Report”), dated October 16, 2023, related to disgorgement of the Apollo Parties’ profits and as presented in the Expert Report of Dr. Thomas Serdari (“Serdari Report”), dated October 16, 2023.

Summary of Rebuttal Opinions

7. **Opinion #1:** From sales of the Accused Product through July 2023, Apollo has earned net profits of \$486,046 after accounting for all relevant costs and expenses. This amount is before apportionment of Apollo’s profits for factors unrelated to the alleged trade dress and trademark infringement

8. **Opinion #2:** From sales of the Accused Product through August 6, 2023, Costco has earned net profits of \$413,028 after accounting for all relevant costs and expenses. This amount is before apportionment of Costco’s profits for factors unrelated to the alleged trade dress and trademark infringement.

9. **Opinion #3:** After apportionment of profits for factors unrelated to the alleged infringement, the portion of Apollo’s profits (after accounting for all relevant costs and expenses) from sales of the Accused Product attributable to the alleged infringement of SDJ’s Trade Dress and Trademark through July 2023 ranges from \$9,721 to \$85,917.

10. **Opinion #4:** After apportionment of profits for factors unrelated to the alleged infringement, the portion of Costco’s profits (after accounting for all relevant costs and expenses) from sales of the Accused Product attributable to the alleged infringement of SDJ’s Trade Dress and Trademark through August 6, 2023 ranges from \$8,261 to \$12,781.

Supplemental Rebuttal Opinions

11. My trial testimony will also include my supplemental rebuttal opinions related to the unproduced annual reports of L'Occitane Group as they pertain to damages claimed in the Plumpe Report and the Serdari Report and a true and correct copy of my supplemental rebuttal expert report dated December 29, 2023, is attached hereto as **Exhibit B**.

Summary of Supplemental Rebuttal Opinions

12. Based on my review and analysis of the Plumpe Report, the Serdari Report, Mr. Plumpe's deposition testimony and exhibits, and Dr. Serdari's deposition testimony and exhibits (including the L'Occitane Group FY2022 and FY2023 annual reports), as well as my education, experience and expertise, it is my opinion that L'Occitane Group's valuations of SDJ's goodwill and trademark before and after the alleged infringement by the Apollo Parties and L'Occitane Group's determination that there has been no impairment to SDJ's goodwill and trademark as of March 31, 2023, are material facts that further demonstrate SDJ has not been damaged.

13. Dr. Serdari was not aware when the Serdari Report was issued on October 16, 2023 that L'Occitane Group had determined the value of SDJ's goodwill and trademark both before and after the alleged infringement by the Apollo Parties had occurred, and determined there was no impairment to SDJ's goodwill and trademarks as of March 31, 2023. Because Dr. Serdari was unaware of these material facts when she issued her expert report on October 16, 2023, various statements made by Dr. Serdari in her expert report in support of her damage opinions are contradicted/undermined by evidence of non-impairment. My Supplemental Report includes examples of the evidence of non-

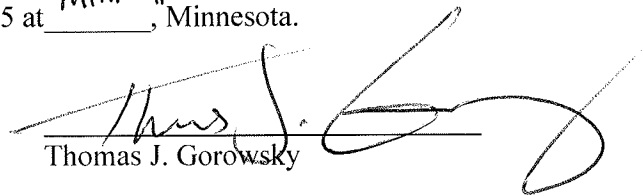
impairment that contradicts/undermines the opinions of Dr. Serdari.

14. Based on the facts in my Supplemental Report, it is my opinion L'Occitane Group's determination that there was no impairment to SDJ's goodwill and trademark after the alleged infringement by the Apollo Parties had occurred contradicts/undermines statements made by Mr. Plumpe and Dr. Serdari in support of their damage opinions and specifically Dr. Serdari's opinions that SDJ's brand was "severely" harmed by the alleged infringement.

15. I reserve my right to respond to any other questions elicited by SDJ at trial or any new opinions offered by their experts at trial.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 6 day of February 2025 at Minneapolis, Minnesota.


Thomas J. Gorowsky

State of Minnesota

County of Hennepin

This document was signed before me on this 6th day of February By Thomas Gorowsky

My commission expires: 1/31/2026.

